

OPINION

Evading the Constitution to Ban Nuclear Tests

By Jon Kyl
And Douglas J. Feith

Barack Obama has done more than any predecessor to increase U.S. presidential power and diminish Congress's constitutional role. He gave the Senate virtually no voice in the Iran nuclear deal and he now plans to undercut the Senate's treaty-making authority even further. The subject this time is the Comprehensive Test Ban Treaty, a 1996 agreement to ban explosive testing of nuclear weapons.

The Senate has already considered and rejected the CTBT. To circumvent Congress, Mr. Obama wants the United Nations to declare nuclear tests illegal. This is an affront to the Constitution and bad nuclear policy.

The safety and reliability of U.S. nuclear weapons cannot be ensured forever without tests.

The United States has not done an explosive nuclear test since 1992. U.S. officials rely on computer simulations to ensure nuclear-weapon safety and reliability. The no-test policy was adopted as a nuclear nonproliferation gesture, in hopes of persuading other countries to similarly restrain themselves. Yet experts worry that the safety and reliability of U.S. nuclear weapons cannot be ensured forever without tests, for there are uncertainties in the relevant chemistry and physics. At some point computer simulations

may not provide enough confidence.

Then-Secretary of Defense Robert Gates noted in a 2008 speech that U.S. nuclear weapons "were designed on the assumption of a limited shelf life." Because "sensitive parts do not last forever," he said, the U.S. re-engineers them to extend their lifespan, but "with every adjustment we move further away from the original design that was successfully tested when the weapon was first fielded." At some point, he warned, it will become "impossible to keep extending the life of our arsenal, especially in light of our testing moratorium."

Because the U.S. no-test policy is a unilateral measure, any president can change it in the future. If America became a CTBT party, however, that policy would harden into a permanent international legal obligation to refrain from testing.

Negotiated in the 1990s, the CTBT won approval from the U.N. General Assembly in 1996 and President Bill Clinton promptly signed it. He then asked the Senate to ratify.

Senate opponents of the CTBT highlighted a number of flaws. Among the gravest was lack of agreement on what the treaty prohibits. The bipartisan 2009 Perry-



Hoisting the rack for the U.S.'s last full-scale nuclear test, 1992.

Schlesinger commission report summarized the opponents' case: "The treaty remarkably does not define a nuclear test. In practice this allows different interpretations of its prohibitions and asymmetrical restrictions. The strict U.S. interpretation precludes tests that produce nuclear yield. However, other coun-

tries with different interpretations could conduct [low-yield] tests . . . Apparently Russia and possibly China are conducting low-yield tests."

Senators also complained that the CTBT isn't verifiable or enforceable: The Russians, Chinese or others could violate it and the U.S. would not necessarily be able to detect, let alone prove, the violation. Taking effective action to compel compliance would be difficult or even impossible.

Allies and partners around the world have positioned themselves for decades under America's so-called nuclear umbrella. Rather than create their own nuclear arsenals, they rely on America for their security. This makes America—and the world—safer than if there were numerous nuclear states.

Imagine, however, the following scenario: Technical problems develop in U.S. warheads and responsible

scientists say that tests are needed to confirm reliability. If America were legally bound not to test, that would undermine faith in its nuclear umbrella and other countries might decide they need their own nuclear weapons. The CTBT could thus aggravate the very problem of nuclear proliferation that it was

created to help solve.

These concerns led the Senate in 1999 to reject the CTBT. The rejection was not close. Instead of receiving the necessary two-thirds majority (67 votes) for approval, the CTBT won 48 votes, while 51 senators voted against it.

Despite this, President Obama wants to make U.S. nuclear tests illegal, and an unprecedented maneuver in the U.N. would allow him to shut the Senate out. Mr. Obama plans to propose a U.N. Security Council resolution declaring that any nuclear test would be an action inconsistent with the CTBT's "object and purpose." Under international law, this would make the ban applicable to countries that are merely treaty signatories—that is, those that have signed but not ratified. The U.S. remains in that category even though the Senate voted the treaty down.

Mr. Obama wants to attach the label "illegal" to nuclear testing without the Senate's advice and consent. This is the way progressive transnational lawyers use courts and multilateral organizations to circumvent legislatures.

A future U.S. president could, in effect, unsign the CTBT, but that doesn't make it proper for Mr. Obama to abuse international legal mechanisms to inflate his executive power at the expense of the Senate. In this particular presidential election season, it's especially important to show respect, not contempt, for the Constitution.

Mr. Kyl served three terms as a U.S. senator from Arizona. Mr. Feith, a senior fellow at Hudson Institute, was undersecretary of defense for policy in the George W. Bush administration.

Asia's Pharma Investment Shows the Benefit of Patent Protection

By Nilanjan Banik
And Philip Stevens

Next month in New York the United Nations will launch its long-awaited High Level Report on access to medicines. The U.N. hopes this will resolve the debate around intellectual property rights and access to medicines.

Leaked versions of the report suggest that this will be a radical assault on the international intellectual-property (IP) system that has been governed since the mid-1990s by the World Trade Organization's agreement on Trade-Related Aspects of Intellectual Property Rights (Trips). It could mean that patents for medicines will be only sporadically granted and enforced in middle- and lower-income countries, licensing will be automatically compulsory, and the current market-based system of drug development will be gradually replaced by a government-led system.

Such ideas may be popular in the rarefied worlds of academia and public-health activism, for which Trips-led IP protections for medicines are an affront. But in China and India, the world's two biggest middle-income countries, Trips has stimulated a nascent boom in medicine innovation. The new U.N. report threatens to derail this crucial development.

Pharmaceutical companies in India and China once took advantage of minimal IP protections to focus on manufacturing generic copies of medicines invented in the West. Then in 2005, India and China upgraded their domestic IP laws to become Trips compliant.

Critics feared that this would hobble the generic industries in these countries and undermine access to medicines in their developing-country export markets. That hasn't been the case. Since 2005, both China and India have enjoyed a growing balance of trade in pharmaceuticals by increasing exports of generic medicines.

Far from throwing in the towel, stronger IP standards have led Indian and Chinese pharmaceutical companies to commit ever-greater sums to research and development and carve out new niches in biopharmaceutical innovation, often in collaboration with international partners.

In the late 1990s, Indian companies reinvested a paltry 1% of their sales on R&D, mostly on reverse engineering. By 2014, after a decade of IP protection, that amount was 6% and is still rising.

The focus among Indian pharmaceuticals is now on diseases affecting Indians, such as diabetes and cardiovascular diseases. They are also developing an international competi-

tiveness in areas such as biogenetics and stem-cell research. The country is becoming a serious player in vaccine innovation, with home-grown vaccines for H1N1 influenza and rotavirus recently hitting the market.

China's biopharmaceutical industry has also been transitioning from imitation to innovation. Chinese researchers are becoming international

If it turns back the clock on intellectual property, the U.N. will cut off many countries from innovation.

leaders in stem-cell R&D, while an increasing number of Chinese firms are looking at innovative therapies involving recombinant DNA, or the joining of DNA molecules from two different species.

A major Chinese innovation milestone came in 2015, when Shenzhen Chipscreen Biosciences launched a biotech medication for a rare type of lymph-node cancer. It was one of the first drugs to be developed from start to finish in China.

These home-grown successes aside, the real innovation story in China and India is the arrival of multinational R&D companies that have

set up partnerships with local companies. A University of Maastricht study of patenting and alliances by 123 Indian biopharmaceutical firms between 1999 and 2009 found a particular surge in innovation among those that entered into cross-border alliances with foreign partners post-Trips.

Trips and its IP protections, the study found, have allowed foreign R&D companies to return to India, where they are increasingly collaborating with local companies and bringing much-needed skills, technology and know-how to the country. Bristol-Myers Squibb, Daiichi Sankyo, GlaxoSmithKline and Sanofi-Aventis all have R&D partnerships with Indian companies.

Stronger post-Trips IP rules have also led to an increase of international R&D partnerships in China. Hutchison China MedTech has separate alliances with AstraZeneca and Eli Lilly to research cancer drugs. Beijing biotech company BeiGene is working on an experimental cancer drug with Merck Group of Germany. Such developments mean China now captures more foreign direct investment in R&D than the U.S., with pharmaceuticals accounting for \$1.6 billion between 2010 and 2015, according to FDI Markets.

The U.N. High Level Panel's fixation on IP as the root of health prob-

lems thus only shows how out of touch it is with the real world. Innovation no longer starts and finishes inside one vertically integrated pharmaceutical company. Big biopharmaceutical companies now collaborate with small companies, academia and the public sector at all stages of the R&D cycle, often across borders.

Sharing valuable knowledge is the basis of this new, networked innovation model. IP is fundamental, as it provides the legal framework that allows valuable knowledge to be safely shared. Without IP, Asian researchers, entrepreneurs and companies wouldn't be able to participate in a meaningful way.

By turning back the clock to the pre-Trips era, the U.N. would cut off China and India from the new world of networked innovation. Smaller countries in Africa, Asia and Latin America wouldn't even get a foothold. It would only entrench Western countries as the only global players in biopharmaceutical R&D. Governments from middle- and lower-income countries that wish to nurture their own innovative biopharmaceutical sectors should treat the new U.N. report with skepticism.

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About Those Loser 'Trumpkins'



MAIN STREET
By William McGurn

In the land of NeverTrump, it turns out one American is more reviled than Donald Trump. This would be the Donald Trump voter.

Lincoln famously described government as of, by, and for the people. Even so, the people are now getting a hard lesson about what happens when they reject the advice of their betters and go with a nominee of their own choosing. What happens is an outpouring of condescension and contempt.

This contempt is most naked on the left. No surprise here, for two reasons. First, since at least Woodrow Wilson progressives have always preferred rule by a technocratic elite over democracy. Second, today's Democratic Party routinely portrays its Republican Party rivals as the assortment of nasty *ists* (racists, sexists, nativists, etc.) making war on minorities, women, foreigners and innocent goatherds who somehow end up in Guantanamo.

Thus Mr. Trump confirms to many on the left what they have always told themselves about the GOP. A New York Times writer put it this way: "Donald Trump's sup-

porters know exactly what he stands for: hatred of immigrants, racial superiority, a sneering disregard of the basic civility that binds a society."

Still, the contempt for the great Republican unwashed does not emanate exclusively from liberals or Democrats. Thanks to Mr. Trump's run for office, it is now ascendant in conservative and Republican quarters as well.

Start with the fondness for the word "Trumpkin," meant at once to describe and demean his supporters. Or consider an article from National Review, which describes a "vicious, selfish culture whose main products are misery and used heroin needles" and whose members find that "Donald Trump's speeches make them feel good. So does OxyContin." Scarcely a day goes by without a fresh tweet or article taking the same tone, an echo of the old Washington Post slur against evangelicals as "largely poor, uneducated and easy to command."

We get it: Trump voters are stupid whites who are embittered because they are losing out in the global economy.

But a new Gallup paper suggests this is may be a caricature that misses the fuller picture. The analysis is by Gallup senior economist Jonathan Rothwell, who looked not only at Trump voters but where they lived:

"The results show mixed evidence that economic distress has motivated Trump support," writes Mr. Rothwell. "His supporters are less educated and more likely to

work in blue collar occupations, but they earn relative high household incomes, and living in areas more exposed to trade or immigration does not increase Trump support."

In fact, in areas where people were more affected by immigration and competition from Chinese imports, support for Mr. Trump declined. By contrast, his support was

What is it that the much-vilified Trump voters are trying to tell us?

stronger in areas low in intergenerational mobility. Could it be that what motivates Trump voters is not a purely selfish concern for how they themselves are faring but how well their children and their communities will do?

There are those, this columnist included, who would argue that the under 2% average growth rate of the past decade has done more to constrict income and opportunity for ordinary Americans than bugaboos such as the North American Free Trade Agreement or currency manipulation by China. In the same vein, there's a strong case to be made that Paul Ryan's "A Better Way" is the path to the Trump voter's goal of "Making America Great Again."

The people are not always right—even schoolboys know about the tyranny of the majority—but a self-governing society ought to welcome the engagement of its citi-

zens. In this light, a more fruitful approach might start by taking note of the surprise popularity in these year's primaries of an outsider businessman in the GOP and a socialist over in the Democratic Party.

The result? A conversation that opened not with a taunt but a question: "What are the American people trying to tell us?" Unfortunately, it's hard to get there when ordinary people with concerns about the future for themselves and their families are hectored and lectured about how loathsome they are.

It all calls to mind a witticism from Bertolt Brecht from 1953, after East German workers who revolted over measures requiring more work for less pay were met with Soviet tanks. In a poem that was not published until years later, Brecht, a playwright who had publicly supported the crackdown, wryly defined the problem as a regime losing confidence in its people rather than the other way around.

"Would it not be easier in that case," he quipped, "for the government to dissolve the people and elect another?"

On TV, through Twitter and in person Mr. Trump has long made clear that his epithet of choice for those who disagree with him is "loser." How ironic that the same people most loudly complaining about what a vulgarian Donald Trump is are now using the same insult to dismiss the ordinary Republican voters who happen to disagree with them.

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